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this view is not the prevailing one is apparent when we consider the difficulty met with in construing the word "interest." If it is used in its popular sense, the provision leads logically to conclusions which even the courts so using it feel themselves bound to disapprove. For since an accidental beneficiary may in this sense be quite as deeply interested in the performance of a contract as an intended beneficiary, this construction, if followed, must inevitably result in giving a right of action to persons whose benefit under the contract, though material, was neither contemplated nor desired by the contractors. This is of course not the law.[4] That the courts do not consistently follow the popular construction is further shown by the fact that even in code states there are instances where a sole beneficiary has not been allowed to sue,[5] and that in New York the creditor cannot sue a firm on its obligation to pay the liabilities of an outgoing partner.[6] In all these cases, the plaintiff has an interest in the popular sense, yet recovery is denied.

The other and perhaps the preferable view is that the word "interest" in the code is used in a legal sense. But if this is so, it cannot be said that any person has an interest, whose rights are recognized neither in law nor in equity.[7] In this view the result of the enactment is merely to "abolish so far as can be done the distinction between rights at law and in equity," [8] leaving it still to be decided whether a plaintiff aside from the code has any right equitable or legal. "No new right of action is created." [9] In the case of a sole beneficiary, it may be that an equitable right exists, founded on the fact that the promisee has no adequate remedy, and that both parties intended the beneficiary to have an enforceable right under the contract.[10] If such a right should be granted by the courts of equity, the code would have the effect of changing it to a legal one. Aside from this consideration, which is at least doubtful, it is probable that the code provision has properly no effect on the enforcement of contracts for the benefit of a third person.

THE LIMITS OF ABSOLUTE PRIVILEGE ATTACHING TO LEGISLATIVE AND JUDICIAL REPORTS. — Broadly speaking, a defamatory statement honestly made in protecting an interest or performing a duty is privileged.[1] Whenever the occasion is such that the public good demands unfettered speech, the private right to reputation must yield. In most cases the privilege is qualified; if it is abused it is forfeited. But there is a class of cases where absolute immunity prevails. In this class are legislative and judicial proceedings, and, by statutes, official reports of such proceedings. How far does the privilege given to such documents extend? Does the imprimatur of the government attach immunity to the document itself and carry its protection to whatever use it may be put? The Court of Appeals of the Dis-

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[4] Wainwright *v.* Queens County Water Co., 78 Hun (N. Y.) 146; Chung Kee *v.* Davidson, 73 Cal. 522; Davis *v.* Clinton, etc., Co., 54 Ia. 59.

[5] Townsend *v.* Rackham, 143 N. Y. 516; Jefferson *v.* Asch, 53 Minn. 446; Vrooman *v.* Turner, 69 N. Y. 516.

[6] Wheat *v.* Rice, 97 N. Y. 296.

[7] *Cf.* 15 HARV. L. REV. 778.

[8] Bliss, Code Pleading, 2d ed., § 47.

[9] Harris, J., in Hodgman *v.* Western R. R. Co., 7 How. Pr. (N. Y.) 492.

[10] This seems a possible explanation for Moore *v.* Darton, 4 De G. & S. 517.

[1] Harrison *v.* Bush, 5 E. & B. 344.

trict of Columbia answers this question in the affirmative. The defendant showed a defamatory report, concerning the plaintiff contained in a Senate document, and it was held that, since it was a public document, there was no libellous publication. *De Arnaud* v. *Ainsworth*, 32 Wash. L. Rep. 662. Publication, in the law of libel, has a technical meaning. Any communication of defamatory matter to a third person is publication and every new communication is a fresh publication.[2] One in any way putting a libel in the hands of another is legally responsible therefor. This rule has been relaxed in favor of newsvendors and innocent carriers. But even in the case of a newsdealer each sale raises a presumptive liability;[3] and while courts sometimes say there was not "sufficient publication," what is meant is that the occasion was privileged.[4] It cannot be denied, therefore, that showing a public report is a publication and creates a *prima facie* liability.

Does the nature of the document, then, absolve the defendant? At the common law, no privilege attached to the publication of parliamentary reports outside of the House of Commons.[5] After the famous case of Stockdale *v.* Hansard[6] decided that authorization by Parliament does not attach a privilege, the act was passed which absolutely privileged all official reports, and in this country there are similar statutes. It would seem that this government authorization should not give any further immunity than that incidental to printing and distributing by the proper authorities. The doctrine of absolute privilege is clearly one to be invoked only by the requirements of necessity, and courts are most zealous to confine its application.[7] True, a public document is available to all, but does that sanction its use to satisfy private motives? A must submit to the printing and proper distribution of a public document even though he is thereby defamed, but that should not permit B wantonly to disseminate the libel. Or may B, who obtained the insertion of a personal attack on A in the Congressional Record, distribute or exhibit copies of the paper with impunity? Or, if enjoined from further publishing a libel, may he widely circulate the official reports containing the prohibited libel and thus practically annul the injunction? Surprising possibilities result from the present decision. Further, once granting its correctness, what difference how the subsequent publication is made? If showing the report is privileged, why not a verbatim reprint or repetition? In somewhat analogous cases in England it has been held that an honest publication of extracts from public registers kept by act of Parliament gives a qualified privilege.[8] The same result ought to be reached in any subsequent publication, in the technical meaning of that term, of all official legislative and judicial documents. To privilege their use absolutely, however, seems an unwarrantable extension of a heretofore strictly limited doctrine.

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[2] Odgers, Libel, 3d ed., 178.
[3] Emmen *v.* Pottle, 16 Q. B. D. 354.
[4] Odgers, Libel, 3d ed., 191.
[5] *Ibid*, 208.
[6] 9 A. & E. 1.
[7] See Stevens *v.* Sampson, 5 Ex. Div. 53, 55; Royal Aquarium, etc., Society *v.* Parkinson, [1892] 1 Q. B. 431.
[8] Searles *v.* Scarlett, [1892] 2 Q. B. 56.